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Federal Communications Commission  
Washington, D.C. 20554

MAY 3 1996

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

The Honorable John E. Baldacci  
U. S. House of Representatives  
1740 Longworth House Office Building  
Washington, D.C. 20515

DOCKET FILE COPY ORIGINAL

Dear Congressman Baldacci:

Thank you for your letter of April 3, 1996, on behalf of your constituent, Dr. Robert Kester, regarding the Commission's decision to freeze acceptance of paging applications. Dr. Kester expresses concern that his paging application has not been granted because of the implementation of the freeze.

The Commission is currently conducting a rulemaking proceeding that proposes to transition from licensing paging frequencies on a transmitter-by-transmitter basis to a geographic licensing approach, using auctions to award licenses where there are mutually exclusive applications. In conjunction with that proceeding, the Commission initially froze processing of applications for paging frequencies. On April 23, 1996, the Commission released a First Report and Order in WT Docket 96-18 and PP Docket 93-253, which adopted interim measures governing the licensing of paging systems and partially lifted the interim freeze for incumbent paging licensees. For your convenience and information, enclosed is a copy of the Press Release concerning the First Report and Order, which includes a summary of the principal decisions made. Specifically, small and medium sized incumbent paging companies will be permitted to expand their service areas if the proposed new site is within 65 kilometers (40 miles) of an authorized and operating site. These interim rules will remain in effect until the Commission adopts final rules in the paging proceeding.

Thank you for your inquiry.

Sincerely,

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

Enclosure

No. of Copies rec'd 1  
List ABOVE

JOHN ELIAS BALDACCI  
2D DISTRICT, MAINE

AGRICULTURE COMMITTEE  
REGIONAL WHIP

1740 LONGWORTH BUILDING  
WASHINGTON, DC 20515  
(202) 225-6306

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-1902

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445 MAIN STREET  
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(207) 764-1036

500 MAIN STREET  
MADAWASKA, ME 04756  
(207) 728-6160

April 3, 1996

*PRB  
PRP  
2078*

Dan Phythyon  
Director  
Office of Legislative Affairs  
Federal Communication Commission  
1919 Mary Street, N.W.  
Washington, D.C. 20554

Dear Mr. Phythyon:

Please find enclosed copies of correspondence that I recently received from Dr. Robert Kester of Lewiston, Maine.

Dr. Kester's concern is with the February 8, 1996 action of the FCC which imposed a filing freeze on all new paging applications. I am inquiring as to what the FCC interim freeze represents and its impact on applications which were properly filed prior to the freeze. Also, I would ask for any information regarding the rules that will govern FCC procedure from this point forward.

Thank you for your attention to this request. I will look forward to your reply.

Sincerely,



John E. Baldacci  
Member of Congress

APR 22 '96 9:30

FROM BALDACCII-LEWISTON

PAGE.001

**To:** Lou Sizemore

FCC- legislative affairs

Fax: 202-418-2806

**From:** Daryl Lamar Fort

U.S. House of Representatives

(207) 782-3704

Fax: (207) 782-5330

April 23, 1996

**Comments:**

Attached is the enclosure absent from our April 3 letter regarding Dr. Robert Kester. If you have any further questions, or if I can be of assistance, please call the number above.

Thank you.

**fax**

TRANSMISSION

APR 22 '96 9:30

FROM BALDACCI-LEWISTON

PAGE.002

**Robert R. Kester, M.D.**  
**Adult And Pediatric Urology**  
10 High Street, Suite 301  
Lewiston, Maine 04240  
(207) 782-5105

March 6, 1996

John E. Baldacci  
Congressman, 2nd District Maine  
1740 Longworth Office Building  
Washington, DC 20515

**RE: EXPROPRIATION OF MY 931 MHz PAGER LICENSE APPLICATIONS BY THE F.C.C.**

Dear Congressman Baldacci:

The recent, February 9, 1996, release of a pager license "freeze and retroactive annulment" of my several pager license applications is a gross violation of my rights as a citizen of the United States. I RESPECTFULLY REQUEST IMMEDIATE AND STRENUOUS INTERVENTION ON MY BEHALF. For your information, I have enclosed copies: (1), a letter from Attorney John Pellegrin regarding this matter; (2), his summary of my license applications [7 licenses, each approximately \$6800.00, including engineering site planning, application fees and commissions, etc.]; and, (3), Mr. Pellegrin's "Comments" to the F.C.C. on my behalf.

If further information is requested, Mr. Pellegrin and I believe it most beneficial to contact him, and he would be happy to brief your staff and provide any additional insights into this violation of YOUR constituents legal rights as you may desire.

Thank you in advance for your PROMPT evaluation and intervention on my behalf.

Cordially,



Robert R. Kester, M.D.

encl.

APR 22 '96 9:31 FROM BALDACC-LWISTON

LAW OFFICES

*John D. Palagrin*

CHARTERED

1140 CONNECTICUT AVENUE, N.W.

SUITE 608

WASHINGTON, D.C. 20036

TELEPHONE (202) 293-2831

FACSIMILE (202) 293-2836

March 5, 1996

Dr. Robert R. Kester  
10 High St.- Suite 301  
Lewiston ME 04240

**Via Federal Express**

Dear Bob:

This is to advise you that the Federal Communications Commission has just recently taken a general action in the paging field having potential consequences with respect to your applications recently filed with the Commission. In an action adopted February 8, 1996 (released February 9, 1996), the FCC imposed a filing freeze on all new paging applications, including 931 Mhz applications. The Commission has adopted tentative interim processing rules and also imposed a partial processing freeze, stating it would not process applications which had been filed by February 8th, but which had not appeared on Public Notice for at least 30 days prior to that time. As the enclosed list shows (in Group One), your Fresno application was filed and placed on Public Notice in an FCC release dated at least 30 days prior to February 8, 1996. Thus, it appears your Fresno application would not be subject to the Commission's new interim processing rules at this time.

However, your other applications were filed and then either placed on Public Notice in an FCC release or filed less than 30 days prior to February 8, 1996. (See Group Two on the enclosed list.) One application (in Group Three) was filed on February 8th itself. Those Group Two and Three applications would appear to fall under the Commission's new freeze rules.

FCC-requested Comments have been filed on behalf of On-Site Communications' clients, such as you, seeking clarification of this unanticipated FCC action. (A copy of the Comments is attached.) This action is being taken because of our belief of the impropriety in the Commission's Notice of Proposed Rule Making (NPRM) adopting the freeze and the interim processing rules. The Comments will seek a determination that the Commission's institution of the freeze and the new processing rules will not bar the processing and grant of your applications.

The pre-eminent paging trade association, the Personal Communications Industry Association (PCIA), has voted unanimously to press the FCC to lift the application freeze. In taking this action PCIA supports our position that the freeze is wrong and should be lifted for those applications already on file.

Now that initial Comments have been filed, Reply Comments for the interim processing rules are due March 11, 1996 (although such may not be necessary). Comments with respect to overall licensing procedures are due March 18, 1996, with those Reply Comments due April 2, 1996. While Comments could be filed on those dates, we believe it is more important to file a request for reconsideration of the Commission's Notice, in order to preserve any legal rights to challenge the Commission's proposed rules, including a possible court challenge if the FCC does not change its proposed Rules to process fairly and equitably yours and others' applications, i.e., by at least "grandfathering" applications filed prior to February 9, 1996. Consequently, we intend to file for reconsideration by March 11, 1996, the reconsideration due date.

We think the Commission's action is a wrongful attempt to impose retroactively new rules and processing procedures on properly-filed paging applicants, and have strongly stated so in our Comments. For your benefit and that of similarly situated applicants, we intend to pursue this matter vigorously through the filing of the above pleadings.

As per our conversation, additional copies of this letter and the Comments are enclosed in case you wish to forward them to your Congressional representatives. We would be glad to brief them if they wish to call for more details as to the FCC's arbitrary and inequitable actions as proposed. Once you have reviewed this and the Comments please call if you have any questions.

Sincerely,

*John D. Pellegrin*  
John D. Pellegrin

**List of 931 Mhs Applications For Robert Kester**

**Group One - Applications Filed and Placed  
On Public Notice For More than 30 Days**

<u>Name</u>	<u>Market</u>	<u>Date</u>
Robert Kester	Fresno	12/6/95

**Group Two - Applications Filed and Placed  
On Public Notice Less than 30 days**

Robert Kester	Victorville CA	1/17/96 - 21971-CD-P/L-96
Robert Kester	El Dorado CA	1/24/96 - 22411-CD-P/L-96
Robert Kester	Ventura CA	1/24/96 - 22423-CD-P/L-96
Robert Kester	Dover OH	1/31/96 - 22853-CD-P/L-96
Robert Kester	Honolulu	2/6/96

**Group Three - Applications Filed on  
February 8th**

Robert Kester	Maui	2/8/96
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cc: Commercial Wireless Division  
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